

acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

Sec.

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AUTHORITY: 10 U.S.C. 3012; sections 537.21 through 537.24 issued under 42 U.S.C. 2651-2653;

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Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

§ 537.1 General.

(a) *Purpose.* This section prescribes, within the limitations indicated in AR 27-20 (AR 27-20 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161), and in paragraph (b) of this section, the procedures for the investigation, determination, assertion, and collection, including compromise and termination of collection action, of claims in favor of the United States for damage to or loss or destruction of Department of the Army (DA) property.

(b) *Applicability and scope.* (1) Other regulations establish systems of property accountability and responsibility; prescribe procedures for the investigation of loss, damage, or destruction by causes other than fair wear and tear in the service; and provide for the administrative collection of charges against military and civilian personnel of the United States, contractors and common carriers, and other individuals and legal entities from whom collection may be made without litigation. When the investigation so prescribed results in preliminary indication of pecuniary liability, and no other method of collection is provided, the matter is referred for action under this section. This relationship exists with regard to—

(i) Property under the control of the DA.

(ii) Property of the Defense Logistics Agency in the custody of the DA.

(iii) Property of nonappropriated funds of the DA (except Army and Air Force Exchange Service property unless a special agreement exists). See AR 215-1 and AR 215-2.

(iv) Federal property made available to the Army National Guard (ARNG).

(2) This section does not apply to—

(i) Claims arising from marine casualties.

(ii) Claims for damage to property funded by civil functions appropriations.

(iii) Claims for damage to property of the DA and Air Force Exchange Service.

(iv) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(v) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(vi) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army, or the Department of Defense (DOD), for loss, damage, or destruction of personal property while in transit or storage at Government expense.

(3) The commander of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to establish procedures for the processing of claims in favor of the United States for loss, damage, or destruction of property which may, to the extent deemed necessary, modify the procedures prescribed herein. Two copies of all implementing directives will be furnished Commander, U.S. Army Claims Service (USARCS). Procedures will be prescribed—

(i) To carry out the provisions of DOD Directive No. 5515.8, assigning single service claims responsibility.

(ii) To carry out provisions of treaties and other international agreements which limit or provide special methods for the recovery of claims in favor of the United States.

(c) *Definitions.* For the purpose of this section only, the following terms have the meaning indicated:

(1) *Claim.* The Government's right to compensation for damage caused to Army property.

(2) *Prospective defendant.* An individual, partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, except an instrumentality of the United States, against whom the United States has a claim.

(3) *Damage.* A comprehensive term, including not only damage to, but also loss or destruction of Army property.

(4) *DA property.* Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefor, real or personal property of a foreign government, which is in the possession or under the control of the DA, one of its instrumentalities, or the ARNG, including that property of an activity for which the Army has been designated the administrative agency, and that property located in an area in which the Army has been assigned single service claims responsibility by appropriate DOD directive.

(5) *Major overseas command.* U.S. Army Europe; U.S. Army Forces Southern Command; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous States specially designated by The Judge Advocate General (TJAG) under the provisions of AR 27-20.

(6) *Area Claims Office.* The principal office for the investigation, assertion, adjudication and settlement of claims, staffed with qualified legal personnel under the supervision of a Staff Judge Advocate (SJA) or Command Judge Advocate or Corps of Engineers district or Command Legal Counsel under provisions of AR 27-20.

(7) *Recovery judge advocate (RJA).* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses and property damage.

(d) *Limitation of time.* The Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) established a 3-year statute of limitations, effective July 19, 1966, upon actions in favor of the United States for money damages founded upon a tort. In computing periods of time excluded under 28 U.S.C. 2416, the RJA concerned shall be deemed the official charged with responsibility and will ensure that action may be brought in the name of the United States within the limitation period.

(e) *Foreign prospective defendants.* Except as indicated below, claims within the scope of this section against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant. Claims against an international organization,

a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such international organization or foreign government, will not be asserted without prior approval of TJAG. Investigation and report thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS, unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(f) *Standards of liability.* (1) The Government's right to compensation for damage caused to Army property will be determined in accordance with the law of the place in which the damage occurred, unless other law may properly be applied under conflict of law rules.

(2) To the extent that the prospective defendant's liability is covered by insurance, liability will be determined without regard to standards of pecuniary liability set forth in other regulations. If no insurance is available, claims will be asserted under this section against military and civilian employees of the United States and of host foreign governments only where necessary to complete the collection of charges imposed upon such persons under the standards established by other regulations.

(g) *Concurrent claims under other regulations.* (1) Claims for damage to DA property and claims for medical care cognizable under §§ 537.21 through 537.24 arising from the same incident will be processed under the sections applicable to each.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim or suit against the United States, the claim in favor of the Government will be asserted and otherwise processed only by an RJA who has apparent authority to take final action on the claim against the Government.

(h) *Repayment in kind.* The RJA who asserts a claim under this section may accept, in lieu of full payment of the claim, the restoration of the property to its condition prior to the incident

causing the damage, or the replacement thereof. Acceptability of these methods of repayment is conditioned upon the certification of the appropriate staff officer responsible for maintenance, such as is described for motor vehicles in AR 735-5, before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

(i) *Delegation of authority.* Subject to the provisions of paragraph (k) of this section, the authority conferred by AR 27-20, to compromise claims and to terminate collection action, with respect to claims that do not exceed \$20,000, exclusive of interest, penalties and administrative fees, is further delegated as follows:

(1) An Area Claims Office, as defined in paragraph (c)(6) of this section, is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than \$10,000.

(ii) Terminate collection action, provided the uncollected amount of claim does not exceed \$10,000.

(2) The SJA, or if so designated, the chief of the Command Claims Service of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to:

(i) Compromise claims, not over \$20,000 without monetary limitations.

(ii) Terminate collection action, provided the uncollected amount of the claim does not exceed \$20,000.

(j) *Compromise and termination of collection action.* (1) The authority delegated in paragraph (j) of this section to compromise claims will be exercised in accordance with the standards set forth in 4 CFR part 104.

(2) The authority delegated in paragraph (j) of this section to terminate collection action will be exercised in accordance with the standards set forth in 4 CFR part 104.

(3) A debtor's liability to the United States arising from a particular incident shall be considered as a single claim in determining whether the claim is not more than \$20,000, exclusive of interest, penalties and administrative fees for the purpose of compromise, or termination of collection action.

(4) Only the Department of Justice may approve claims involving:

(i) Compromise or waiver of a claim asserted for more than \$20,000 exclusive of interest, penalties and administrative fees.

(ii) Settlement actions previously referred to the Department.

(iii) Settlement where a third party files suit against the United States or the individual federal tortfeasor arising but of the same incident.

(k) *Releases.* The RJA who receives payment of the claim in full, or who receives full satisfaction of an approved compromise settlement, is authorized to execute a release. A standard form furnished by the prospective defendant or his insurer may be executed, provided no indemnity agreement is included.

(l) *Receipts.* The RJA may execute and deliver to a prospective defendant a receipt for payment in full, installment payment or an offered compromise payment, subject to approval of the SJA. DA Form 2135-R (Receipt for Payment for Damage to or Loss of Government Property) be used.

§ 537.2 Recovery of property unlawfully detained by civilians.

Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the procedures contained in AR 735-11, Para. 3-15, Unit Supply UPDATE 10, should be followed.

§ 537.6 Maritime casualties; claims in favor of the United States.

See 32 CFR 536.60, which covers claims on behalf of the United States as well as claims against the United States.

§ 537.7 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee, under the direction of the Secretary of Defense, is authorized by Army Maritime Claims Settlement Act of 1956 (70A Stat. 270), as amended (10 U.S.C. 4801-4804, 4806).

(b) *Related statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought; the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741-752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781-790); the Extension of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code (U.S.C.), sections 7365, 7621-7623, and by the Department of the Air Force under 10 U.S.C. 9801 through 9804, 9806.

(c) *Scope.* (1) Section 4803 of title 10, U.S.C., provides for the settlement or compromise of claims of a kind that are within the admiralty jurisdiction of a district court of the United States and of claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the Department has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed \$500,000.

(2) Section 4804 of title 10, U.S.C., for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA for any vessel. The amounts of claims for salvage services are based upon per diem rates for the use of salvage vessels and other equipment; and materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis, in accordance with commercial practice, in an appropriate case.

(d) *Amounts exceeding \$500,000.* Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding \$500,000 payable to the United States. However, all such claims otherwise within the scope of this section will be investigated and reported to the Commander, USARCS.